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May 6, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

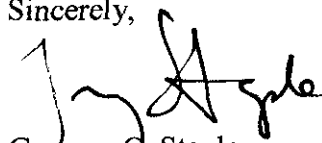
Re: Petitions for Protection From Whipsawing on the US-Philippines
Route IB Docket No. 03-38 Exparte

Dear Ms. Dortch:

On Wednesday, May 5, 2004, on behalf of Bayan Telecommunications, Inc. ("Bayantel"), I met with Paul Margie, Legal Advisor to Commissioner Michael Copps, Jennifer Manner, Legal Advisor to Commissioner Kathleen Abernathy and Sam Feder, Legal Advisor to Commissioner Kevin Martin concerning the above-referenced proceeding. The positions advanced on Bayantel's behalf are set out fully in the company's prior pleadings in this docket and in the one page attachment hereto.

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Gregory C. Staple
Attorney for Bayan Telecommunications, Inc.

cc. Paul Margie
Jennifer Manner
Sam Feder

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***Bayan Telecommunications, Inc ("Bayantel")
Application for Review
of IB March 2003 Order in IB Docket No.03-28
regarding alleged "whipsawing" on U.S -Philippine route***

- **On review, the FCC should vacate the IB's Order regarding Bayantel because it was not supported by the facts or the law.**

Bayantel is not PLDT -- or Smart or Globe.

Bayantel has approximately 1% of total Philippine access lines and no cellular service.

Bayantel has no market power. Bayantel did not collude with any Philippine carrier with market power.

Bayantel did not block the inbound traffic of AT&T or MCI.

Thus, on review, the FCC must be careful not to lump together Bayantel with other Philippine carriers.

- **Due process requires special attention to the facts in Bayantel's case because an adverse decision on review may cause Bayantel irreparable harm and subject it to additional civil or criminal penalties.**

The facts originally before the IB now overlap the pending criminal antitrust Grand Jury investigation in Hawaii.

FCC must be careful not to prejudge that investigation or subject a party to additional liability.

- **Even if the stop payment order was justified as to some carriers (excluding Bayantel), the IB had no legal basis for reimposing the ISP on U.S. carrier agreements with competitive carriers like Bayantel, at least pending Commission action on the then outstanding ISP Reform NPRM in Docket No. 02-234 .**

In view of the above, on review, the FCC should reverse and vacate the IB's order regarding Bayantel.

Even though the IB later lifted the stop payment order as to Bayantel in March 2003, the FCC should act to avoid any potential prejudice regarding future antitrust proceedings.

Given the Commission's subsequent March 2004 ISP Reform Order in Docket No. 02-234, which repealed the ISP completely on the United States-Philippine route, there plainly is no legal basis now -- and there never was -- for imposing the ISP on U.S. carrier contracts with Bayantel